

## **MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021 between \_\_\_\_\_ ("Contractor"), whose address is \_\_\_\_\_ and telephone number is \_\_\_\_\_ and the CITY OF PLEASANTON, a municipal corporation ("City").

### **RECITALS**

A. Contractor is qualified and experienced in providing traffic signal maintenance services for the purposes specified in this Agreement.

B. City finds it necessary and advisable to obtain these services from Contractor on an as-needed basis for the purposes provided in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

1. **Services to be Performed.** The work will consist of traffic signal maintenance services in conjunction with the operation of the traffic signals at the intersections listed in Exhibit A – Intersections and Exhibit B – Beacons & In-Pavement Lights. Services shall include Preventive Maintenance, emergency response service and other extra work to provide for the continuous operation of the City's traffic signal equipment, and that work, as more particularly set forth in the Attachment 3 - Scope of Work and incorporated herein.

2. **Compensation.** City shall pay Contractor as follows: Except for authorized extra work (pursuant to Paragraph 5), the total monthly compensation payable to Contractor by City for the services under this Agreement SHALL NOT EXCEED the monthly flat rate fee of PER INTERSECTION (herein "not to exceed amount") as set forth in Attachment 5 "Proposal Price Comparison" - of the Request for Proposals.

The rates and expenses set forth in Attachment 5 - "Proposal Price Comparison" - of the Request for Proposals, shall be binding upon Contractor until June 30, 2023, after which any change in said rates and expenses must be approved in writing by the City's Community Development Director (City is to be given 60 days notice of any rate increase request).

3. **Term.** The term of this Agreement will expire on June 30, 2023. Upon written agreement of both parties, the term of this Agreement may be extended for up to two (2) additional one-year terms.

4. **Method of Payment.** Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City. Delivery shall not constitute acceptance of any goods.

5. **Extra Work.** The City shall pay Contractor for City authorized extra work detailed in Attachment 3 - Scope of Work, included within the services described in Paragraph 1 and such amounts as mutually agreed to in advance. Unless the City and Contractor have agreed in writing before the performance of extra work, no liability and no right to claim compensation for such extra work or expenses shall exist. The applicable hourly rates, equipment rates and material costs for extra work shall be at the rates set forth in Attachment 5 - "Proposal Price Comparison"- of the Request for Proposals.

6. **City Project Manager and Services by City.** The services to be performed by the Contractor shall be accomplished under the general direction of and coordinated with, the City's traffic signal maintenance "Project Manager", as that staff person is designated by the City from time to time.

The City shall perform the following services: provide copies of record traffic signal drawings and controller cabinet prints for the signalized intersections listed in Attachment 1A - Intersections.

7. **Progress and Completion.** Contractor shall commence work on the services to be performed upon receiving written authorization to proceed with the work provided by the City's Project Manager. All traffic signal maintenance work shall be provided in a timely manner as specified in Attachment 3 - Scope of Work.

8. **Ownership of Documents.** All drawings, designs, data, photographs, reports and other documentation (other than Contractor's drafts, notes and internal memorandum), including duplication of same prepared by Contractor in the performance of these services, shall become the property of the City upon termination of contractual services pursuant to this Agreement for Contract Services and upon payment in full of all compensation then due Contractor. If requested by the City, all, or the designated portions of such, shall be delivered to the City.

9. **Indemnification.** Contractor shall indemnify, save and hold harmless from and defend the City, its officers, agents and employees, against any and all claims, costs, demands, causes of action, suits, losses, expense or liability arising from, or alleged to have arisen, from any acts or omissions of Contractor, its agents, sub-contractors, officials or employees, in connection with the execution of the work covered by this Agreement, as it may be amended, except for the sole negligence or willful misconduct of City. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used in manufacture of such tools or equipment, constitutes an infringement of any patent issued by the United States. This entire indemnification provision shall survive termination or cancellation of this Agreement.

10. **Insurance.** During the term of this Agreement, Contractor shall maintain at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A:VII:

a. General Liability and Bodily Injury Insurance. Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Contractor and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.

b. Automobile Liability Insurance. Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.

c. Workers' Compensation Insurance. Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For services deemed public works, by signing this agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

d. Certificate of Insurance. Contractor shall file a certificate of insurance and endorsements with the City prior to the City's execution of this Agreement, certificate of insurance shall provide in writing that the insurance afforded by this certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

e. Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

11. **Independent Contractor.** The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.

12. **Warranty Against Defects.** Contractor warrants all work done and goods provided under this Agreement shall: a) meet all conditions of the Agreement: b) shall be free from all defects in design, material and workmanship: and 3) shall be fit for the

purposes intended. If any defects occur within said 12 months following acceptance, Contractor shall be solely responsible for the correction of those defects.

13. **Acceptance of Final Payment Constitutes Release.** The acceptance by Contractor of the final payment made under this Agreement for Maintenance Services shall operate as and be a release of the City from all claims and liabilities for compensation to Contractor anything done, furnished, or relating to Contractor's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of Contractor, its employees, subcontractors, agents and Contractors for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by Contractor, its employees, subcontractors, agents and Contractors.

14. **Waiver, Remedies Cumulative.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

15. **Conflict of Interest.** Contractor is unaware of any City employee or official that has a financial interest in Contractor's business. During the term of this Agreement and/or as a result of being awarded this contract, the Contractor shall not offer, encourage or accept any financial interest in Contractor's business by any City employee or official.

If a portion of Contractor's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Contractor warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

16. **Labor Code/Prevailing Wages.** To the extent applicable, Contractor shall comply with the requirements of the California Labor Code including but not limited to hours of

labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

17. **Construction of Language of Agreement.** The provisions of this Agreement shall be construed as a whole according to its common meaning or purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. The Contractor shall forfeit fifty dollars (\$50.00) each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

18. **Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19. **Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

To City:           Traffic Engineering  
                      City of Pleasanton  
                      P.O. Box 520  
                      Pleasanton, CA 94566

To Contractor:

20. **Miscellaneous Provisions.**

- a. City may terminate this Agreement at any time by mailing a notice to Contractor. Contractor shall be paid for that portion of goods provided/work completed when notice is received.
- b. Contractor shall not assign or transfer this Agreement.

c. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.

d. This Agreement constitutes the entire understanding of the parties.

e. This Agreement may only be modified by a writing signed by the Authorized representative of both parties.

f. Contractor covenants that it has obtained all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.

g. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws. Contractor shall bear full and exclusive responsibility for any release of hazardous or nonhazardous substances and disposal of hazardous wastes.

h. The Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for three years from the date of final payment under this Agreement.

i. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Alameda County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

CITY OF PLEASANTON

By: \_\_\_\_\_

Nelson Fialho  
City Manager

CONTRACTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel Sodergren, City Attorney

